On October 25, 1978, the day fixed for the hearing of the action, the appellants paid up the sum of $61,861.03 and the parties agreed to withdraw their claim and counterclaim respectively, and that costs be taxed and paid by the appellants, but they could not agree on the question of interest which the respondents asked for on the $61,861.03.

On the day of the hearing counsel for the parties appeared before the judge in chambers and informed the learned judge that the parties had settled the matter but there was the question whether or not interest should be paid on the claim of $61,861.03 and they asked the learned judge to make a decision on the matter. After hearing both counsel the learned judge ordered the appellants to pay the respondents interest on the $61,861.03 at the rate of 8% per annum from the date of the filing of the writ to the date of the settlement and further ordered that the costs of the action be taxed and paid by the appellants.

The main contention of the appellants is that the learned judge erred in law in holding that interest was payable by the appellants on the sum claimed by the respondents as section 9 of the Civil Law Act (Cap. 30) gives the learned judge jurisdiction to award interest only in any proceedings tried in any court of record for the recovery of any debt or damages.

Section 9 reads:

"In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section —

....
...."

Counsel for the appellants says that as the respondents' and the appellants' claim and defence and counterclaim, respectively, were withdrawn by consent there was no trial for the recovery of any debt or damages within the meaning of section 9.

In support of his argument he cited the case of *The "Medina Princess"*.[1] In that case action was commenced by plaintiff seamen against the defendant owners of The "Medina Princess" for unpaid wages. Defence was ordered to be delivered. No defence was delivered but the wages were paid. The plaintiffs asked for interest on the wages and moved the court for judgment for interest upon the sums claimed for wages. It was contended on behalf of the defendants that it was not a case under which interest should be paid under section 3(1) of the Law Reform (Miscellaneous Provisions) Act, 1934, as that provided that interest "shall be included in the sum for which judgment is given." The claims had been paid. No judgment had ever been obtained, and the court was not empowered to award interest on debts unless it had already given judgment upon them. It was held (Hewson J.) that by the Law Reform (Miscellaneous Provisions) Act, 1934, section 3(1) the court had no power to order interest to be paid on sums which had already been paid and which had not been the subject of its judgment.

Section 9 of the Civil Law Act (Cap. 30) is *in pari materia* with section 3(1) of the Law Reform (Miscellaneous Provisions) Act, 1934. We respectfully agree with the judgment of Hewson J. in *The "Medina Princess"*. We are of the view that in the present case the court had no power to award interest to the respondents under section 9.

That, however, is not the end of the matter. The High Court has been given additional powers by section 18(2) of the Supreme Court of Judicature Act (Cap. 15).

Such additional powers are set out in the First Schedule to the Act and paragraph 7 of the First Schedule reads: —

"Power to direct interest to be paid on debts, including judgment debts, or on sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the court."

Counsel for the appellants contends that "debt" does not mean any debt but must refer to debt which is the subject matter of legal proceedings. In the present case the debt had been paid and there was no debt on which the learned judge could order interest to be paid.

Let us examine what actually took place on the day fixed for the hearing of the action. On the appellants paying to the respondents $61,861.03, the parties agreed to withdraw their claim and counterclaim respectively and also agreed that the costs be taxed and paid by the appellants. But, as the parties could not reach a settlement as to the question of payment of interest on the $61,861.03 which the respondents wanted, the parties proceeded with the hearing on that issue alone before the learned judge. In our opinion there was clearly a debt within the meaning of paragraph 7 of the First Schedule to the Act. When the learned judge was asked to decide on the respondents' claim for interest the action had not been discontinued and the respondents had not yet withdrawn their claims which included a prayer for "any other reliefs which this Honourable Court shall deem fit."

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Lee, Woo & Partners; Tang Tan & Partners.*

THE CHIEF ASSESSOR, SINGAPORE v. NATIONAL SHIPBREAKERS PTE. LTD.

[O.C.J. (Chua J.) September 5, 1980]

[Singapore — Originating Motion No. 60 of 1979]

Revenue Law — Property tax — Method of valuation — Contractor's basis — Whether contractor's basis is s. 2(b)(i) of Property Tax Act — How contractor's basis should be applied — Property Tax Act (Cap. 144), s. 2(b)(i).

The appellant appealed against the decision of the Valuation Review Board which ordered that the annual value of the subject property No. 23 Tanjong Kling Road for the years 1971 to 1973 be fixed at $69,360. The said property is a shipbreaking yard belonging to the respondents. It is an industrial property situated at Jurong Industrial Estate and stands on 337,370 sq. ft. of land leased from the Jurong Town

Corporation. Annual ground rent for the land was calculated at 6% of the land value of $2.50 per sq. ft.

The Board was of the view that the annual value of the subject property for the years 1971, 1972 and 1973, ascertained under the contractor's basis was $69,360 this amount being 6% return on a capital value of $1,156,000 and directed that the Valuation List for these years and for the ensuing ones be accordingly amended.

Two main issues were raised in the appeal: (1) how the contractor's basis should be applied; (2) whether section 2(b)(i) of the Property Tax Act (Cap. 144) is the contractor's basis.

Held, allowing the appeal: (1) the contractor's basis falls within the primary definition no matter what rate of interest is applied;

(2) section 2(b)(i) cannot be the contractor's basis; the contractor's basis is a well established method of valuation which falls squarely within the primary definition of annual value; There are 4 differences between the contractor's basis and section 2(b)(i);

(3) section 2(b)(i) is a last resort formula to be applied when any of the methods based on the primary definition is not appropriate. When it is to apply and to what cases it is appropriate, the sole discretion belongs to the Chief Assessor;

(4) once the Chief Assessor has decided that the contractor's basis is the most suitable method to apply he must apply the proper rate according to the proper rules. He cannot then further exercise another option as to the rates;

(5) in the present case the Board had erred in interpreting section 2(b)(i) as the contractor's basis;

(6) since the Board was satisfied that the 6% applied by the Chief Assessor was a figure "well below commercial borrowing rates", and since the Board did not reject the evidence of the Chief Assessor's valuer but rather agreed with and accepted what he had said, the Board should, to be consistent, also conclude that the result of applying the 6% net market or commercial rate to the effective capital value would give a net value. The application of a net rate to a capital sum cannot give a gross amount. The Board had erred by so concluding and had therefore erred in ordering that the expenses of repairs, insurance, maintenance and property tax should not be added at all;

(7) the proper rate to apply is 36% of the annual value for property tax.

[**Editorial Note:** The respondents appealed to the Court of Appeal (Civil Appeal No. 91 of 1980, Wee Chong Jin C.J., Kulasekaram and Rajah JJ.). At the hearing on October 12, 1981, counsel for the appellant withdrew the appeal.]

Cases referred to:-

(1) *R.* v. *Paddington Valuation Officer, Ex parte Peachey Property Corporation Ltd.* [1966] 1 Q.B. 380, 412.

(2) *Cardiff City Council* v. *Williams (Valuation Officer)* (1973) R.A. 46, 50-51.

(3) *Dawkins (Valuation Officer)* v. *Royal Leamington Spa Corporation and Warwickshire County Council* (1961) 8 R.R.C. 241, 251.

ORIGINATING MOTION.

Lucy Hangchi (Mrs.) (State Counsel) for the appellant.

P. Selvadurai for the respondents.

Cur. Adv. Vult.

Chua J.: This is an appeal against a decision of the Valuation Review Board (the Board) which ordered that the annual value of the subject property No. 23 Tanjong Kling Road for the years 1971 to 1973 be fixed at $69,360.

The undisputed facts regarding the subject property are as follows. It is a shipbreaking yard of the respondents and the only one of its kind in Singapore. It is an industrial property situated at Jurong Industrial Estate and stands on 337,370 sq. ft. of land leased from the Jurong Town Corporation. Annual ground rent for the land is calculated at 6% of the land value of $2.50 per sq. ft. It has a waterfrontage of 976 ft. leased for $9 per foot-run per annum, a wharf, jetty and a mud-dock.

This appeal has had a very long history. The subject property was first assessed for its annual value in 1971 by the Chief Assessor's valuer, Mr. Shee Ping Yah, applying the contractor's test or contractor's basis of valuation. The respondents appealed against the Chief Assessor's valuation. In 1974 the Board heard the appeal for the first time and dismissed the appeal. On further appeal, the High Court allowed the appeal. On further appeal, the Court of Appeal remitted the matter back to the Board to rehear the whole case. The appeal came before the Board for a second time in 1977. Five witnesses gave evidence for the respondents. However the hearing could not be completed as the Chairman of the Board was elevated to the Bench. In July 1979 the appeal was heard afresh by the Board. By this time most of the issues in dispute at the previous hearing were either abandoned or agreed upon between the parties and the Chief Assessor had proposed that the annual value of $112,000 be ascribed to the subject property. The respondents maintained that it should be $57,800. Only one witness was called, the Chief Assessor's valuer Mr. Shee Ping Yah. There was no dispute as to the application of the contractor's basis of valuation to the subject property. The Board was of the view that the annual value of the subject property for the years 1971, 1972 and 1973, ascertained under the contractor's basis was $69,360, this amount being 6% return on a capital value of $1,156,000 and directed that the Valuation List for these years and for the ensuing ones be accordingly amended.

Two main issues are raised in this appeal. The first is how the contractor's basis should be applied. The second is whether section 2(b)(i) of the Property Tax Act (Cap. 144) is the contractor's basis.

The question is what is the real effect of the definition of "annual value" prescribed in section 2 of the Property Tax Act (Cap. 144).

"Annual value" is defined in section 2 thus:

> "'annual value', as used of a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes; and, as used of a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the tenant paying the expenses of repair, insurance, maintenance or upkeep:"

One of the provisos to the above definition (hereinafter referred to as "the primary definition") relevant to the present appeal stipulates as follows:

> "Provided that —
>
> (a) ....
>
> (b) in assessing the annual value of any property the 'annual value' of such property shall, at the option of the Chief Assessor, be deemed to be the annual value as herein-

before defined or the sum which is equivalent to the annual interest at five per cent —

(i) on the estimated value of such property, including buildings, if any, thereon; or

(ii) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon;

....

...."

In estimating the gross amount at which a property can reasonably be expected to be let from year to year, the process of arriving at annual value for rating in England has been described by Lord Denning M.R., in *R.* v. *Paddington Valuation Officer, Ex parte Peachey Property Corporation Ltd.*[1] as follows: —

"The rent prescribed by the statute is a hypothetical rent, as hypothetical as the tenant. It is the rent which an imaginary tenant might be reasonably expected to pay to an imaginary landlord for a tenancy of this dwelling in this locality, on the hypothesis that both are reasonable people, the landlord not being extortionate, the tenant not being under pressure, the dwelling being vacant and to let, not subject to any control, the landlord agreeing to do the repairs and pay the insurance, the tenant agreeing to pay the rates, the period not too short nor yet too long, simply from year to year."

This description arose because the English rate Acts have defined the measure of annual value as the rent which might reasonably be expected from a hereditament, which definition is similar to the primary definition in section 2 of the Property Tax Act, and Lord Denning's description may be said to aptly describe our definition. It is settled that in determining annual value on the basis of the hypothetical tenancy, valuers may adopt one of several established methods of valuation best suited to the circumstances of the property to be valued. These are broadly set out in *Ryde* on Rating (13th Ed.) at page 443 *et seq.*

Where property is of a kind that is rarely let from year to year, recourse is sometimes had to interest on capital value, or on the actual cost, of land and building, as a guide to the ascertainment of annual value. This method is commonly referred to as the "contractor's test" or "contractor's basis".

With regard to the subject property the Chief Assessor is of the opinion that, since —

(a) there is no direct evidence of rental of the subject property;

(b) there is no evidence of the rental of comparable properties because it is the only one of its kind in Singapore; and

(c) the "profits basis" is not appropriate;

the most appropriate method to adopt in determining the annual value is the "contractor's test" or "contractor's basis" of valuation. This was conceded by the respondents before the Board. The dispute between the parties before the Board essentially revolved around the question of how this method was to be applied in Singapore in the context of the definition of "annual value" in section 2.

What then is the "contractor's basis"?

Since the measure of net annual value is defined by statute in England as the rent which might reasonably be expected, in the absence of the best evidence, that is, actual rents, interest on capital value can be looked at as *prima facie* evidence in order to answer the question of fact what rent a tenant may reasonably be expected to pay (see *Ryde* on Rating, 13th Ed. at page 509). The adoption of this method of valuation, commonly referred to as the "contractor's test" or "contractor's basis", involves the application of a commercial rate of interest to the present day cost of reproducing the hereditament. There is judicial authority over a long period to support this practice.

Lord Denning M.R. in *Cardiff City Council* v. *Williams (Valuation Officer),*[2] described the following passage from the decision of the Lands Tribunal in *Dawkins (Valuation Officer)* v. *Royal Leamington Spa Corporation and Warwickshire County Council,*[3] and quoted in *Ryde* at page 516) as the "classic explanation" of the contractor's basis:

"The use of the contractor's basis, last resort or not, is amply supported by the authorities. In his opening the Solicitor-General pointed to its logic in words we cannot hope to improve upon: 'As I understand it, the argument is that the hypothetical tenant has an alternative to leasing the hereditament and paying rent for it; he can build a precisely similar building himself. He could borrow the money, on which he would have to pay interest; or use his own capital on which he would have to forgo interest to put up a similar building for his owner-occupation rather than rent it, and he will do that rather than pay what he would regard as an excessive rent — that is, a rent which is greater than the interest he forgoes by using his own capital to build the building himself. The argument is that he will therefore be unwilling to pay more as an annual rent for a hereditament than it would cost him in the way of annual interest on the capital sum necessary to build a similar hereditament. On the other hand, if the annual rent demanded is fixed marginally below what it would cost him in the way of annual interest on the capital sum necessary to build a similar hereditament, it will be in his interest to rent the hereditament rather than build it.'"

According to *Ryde* (at page 518) in the modern practice of applying the contractor's basis it is possible to discern five stages —

The first stage is the estimation of the cost of construction of the building.

The second stage is to make deductions from the cost of construction to allow for age, obsolescence and any other factor necessary to arrive at the "effective capital value".

The third stage is to estimate the cost of the land in accordance with the principle of *"rebus sic stantibus"*.

The fourth stage is to apply the market rate or rates at which money can be borrowed or invested to the effective capital value of the building and the land. The result is what it would cost the occupier, in annual terms, to provide the hereditament for himself, rather than to lease it.

The fifth stage is to consider whether the result of the fourth stage really represents what the hypothetical tenant would pay for an annual tenancy on the statutory terms, and to make any adjustments necessary to ensure that no higher rent is fixed as the basis of assessment than that which it is believed the owner would really be willing to pay for the occupation of the premises.

In applying the contractor's basis (see Exhibit A1) the Chief Assessor obtained the cost of the construction of the buildings on the subject property as the basis of arriving at their effective capital value of $166,200. Added to the value of $989,800 for the land and water-frontage, the effective capital value of both land and buildings is $1,156,000, which amount is accepted by the respondents.

The cause of dissension lies in the Chief Assessor's decision to

(i) adopt 6% as being the commercial rate to be applied to the effective capital value (giving a net return of $69,360).

(ii) Add in 2% ($2,030) over building and improvement cost (excluding cost of wharf and jetty) for repairs and maintenance and 0.3% ($305) for insurance; and

(iii) Add a further 36% ($40,328) for property tax of gross annual rental.

These additions to the effective capital value of $69,360 have resulted in inflation of the annual value by a further $42,663, thus giving a total annual rental of $112,023 (rounded off to $112,000).

It is contended on behalf of the respondents, (both before this court and before the Board) that the contractor's basis as it is known in England has been incorporated into the Property Tax Act in the form of the option set out in proviso (b)(i) to the definition of "Annual Value" in section 2 (Section 2(b)(i)). Because of fluctuating interest rates, counsel for the respondents submitted before the Board that the legislature had, as a matter of policy, fixed the rate of interest to be applied to effective capital value at 5%. He argued that in assessing the subject property the Chief Assessor ought therefore to have taken the sum which is equivalent to the annual interest at 5% of the estimated value of the property including buildings and ought not to have proceeded under the primary definition. Computed in this manner, the annual value of the subject property would be $57,800.

The appellant disputes (and also before the Board) that section 2(b)(i) is the contractor's basis which it is contended comes within the primary definition of "annual value".

The Board was of the opinion that: "in determining annual value in accordance with section 2, the option to deem it to be the annual value as defined (the primary definition), or to adopt the alternative set out in the proviso, is the sole prerogative of the Chief Assessor. In exercising his option to rely on the primary definition, he is entitled to adopt any one of the recognised methods to measure the 'gross amount' at which a property 'can reasonably be expected to be let from year to year'. This would include the contractor's method".

The Board then went on to express its opinion on section 2(b)(i):

"It therefore follows that the alternative in proviso (b)(i) is to all intents and purposes, the contractor's test statutorily defined, but only insofar as the rate of interest to be applied has been fixed by the legislature at 5%. What the proviso means, as we understand it, is that the Chief Assessor has an option, either to apply the commercial rate of interest to effective capital value in the fourth stage of the process when he deems annual value to be the primary definition, or to apply the statutory rate of 5%, if for any reason he encounters difficulty in ascertaining the proper commercial rate to be applied. This does not however mean that the contractor's method has been taken out of the primary definition. An option is merely given to the Chief Assessor to apply a statutory rate of interest, the fixation of which relieves the Chief Assessor of the task of applying the fourth and fifth stages. This however, does not make it any less the contractor's method."

The Board then went on to deal with the issue which "we consider to be really fundamental to the application of the contractor's method, namely is the Chief Assessor justified in adding expenses of 'repairs, insurance, maintenance or upkeep and all taxes' to effective capital value in ascertaining gross rent." The Board came to this decision:

"We are of the opinion that 'topping-up' on effective capital value as has been done by the respondent, would not only be contrary to the literal meaning of the primary definition, but would also constitute a radical departure from the fundamental concept of the contractor's method, which in essence is the process of applying an interest charge on actual or estimated cost in order to ascertain the gross annual value of a hypothetical tenancy."

The Board accepted the evidence of Mr. Shee Ping Yah, the Chief Assessor's valuer, regarding the interest rates prevailing at the relevant time. The Board said:

"We are satisfied that 6% accurately represents what the appellants (the respondents in this appeal) would be willing to pay, regard being had not only to the fact that this figure is well below commercial borrowing rate, but also to the fact that the appellants are paying rental for the land calculated at the rate of 6% of the land value."

The Board was of the opinion that the annual value of the subject property for the years 1971, 1972 and 1973, ascertained under the contractor's basis, was $69,360, this amount being 6% return on a capital value of $1,156,000, and directed that the Valuation List for those years and for the ensuing ones be accordingly amended.

The Chief Assessor now appeals to this court against the decision of the Board.

The questions before this court are (1) whether section 2(b)(i) of the Property Tax Act is the contractor's basis and (2) how the contractor's basis should be applied.

It is submitted by the appellant that the Board erred in law in holding that section 2(b)(i) is "the contractor's test 'statutorily defined' but only in so far as the rate of interest to be applied has been fixed by the legislature at 5%."

To put it shortly the decision of the Board is this. Section 2(b)(i) is the contractor's basis but only in so far as the rate of interest to be applied has been fixed by the legislature at 5% but this does not mean that the contractor's basis has been taken out of the primary definition. In other words it remains within the primary definition when rates other than the 5% are applied.

It is well established that the contractor's basis falls within the primary definition no matter what rate of interest is applied. If 5% is the proper rate,

it can be applied under the primary definition. If the facts indicate other rates they can also be applied under the primary definition. So to enact section 2(b)(i) as the contractor's basis only when applying 5% is quite unnecessary. Counsel for the respondents says that section 2(b)(i) is unique and that there is nothing similar in the United Kingdom Acts. But because this proviso is unique it does not follow that the proviso is the contractor's basis.

On the contrary, section 2(b)(i) cannot be the contractor's basis. The contractor's basis is a well established method of valuation which falls squarely within the primary definition of annual value. There are four differences between the contractor's basis and section 2(b)(i). These are (see the evidence of Mr. Shee Ping Yah, the Chief Assessor's valuer, before the Board page 63/64 of Record): —

(1) Section 2(b)(i) is not a valuation method; it is only a formula, peculiar to Singapore and appears under the proviso in a different paragraph altogether.

(2) Section 2(b)(i) has a fixed rate of 5%. In the contractor's basis the net return percentage is the "market rate".

(3) The 5% in section 2(b)(i) is a gross percentage figure whereas in the contractor's basis the net return is the starting point.

(4) Section 2(b)(i) is an option which is to be applied at the discretion of the Chief Assessor, usually when other established methods under the primary definition are not appropriate; whereas the contractor's basis is an accepted method.

In my view section 2(b)(i) is, as contended by the appellant, a last resort formula to be applied when any of the methods based on the primary definition is not appropriate. When it is to apply and to what cases it is appropriate, the sole discretion belongs to the Chief Assessor. This discretion is only as to which is the proper method to apply depending on the facts of the particular property. Once he has decided that the contractor's basis is the most suitable method to apply he must apply the proper rate according to the proper rules. He cannot then further exercise another option as to the rates.

To interpret section 2(b)(i) as the contractor's basis as the Board has done is wrong.

The Board has listed correctly in its grounds of decision the five stages to be followed in the application of the contractor's basis. The parties have no dispute regarding the calculations from stage one to stage three. All are agreed that the effective capital value at the end of stage three should be $1,156,000 and the Board has accepted this figure.

It is submitted by the appellant that the Board has erred in ordering that the expenses of repairs, insurance, maintenance and property tax should not be included in its computation at the last stage.

Under the primary definition of "annual value" a distinction is made between the annual value of houses, buildings and lands on the one hand and the annual value of a wharf, pier, jetty and landing stage on the other. The second limb of the primary definition reads:

> "annual value — as used of a wharf, pier, jetty or landing stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the tenant paying the expenses of repair, insurance, maintenance or upkeep."

The Board came to the conclusion that "when annual value is ascertained in accordance with the contractor's method, the amount derived on applying the commercial rate is the gross value." The Board in its grounds of decision continues: —

> "That is the basis of the hypothetical rent. It is to be assumed that from this amount the landlord has to pay the expenses and because of this assumption, no deductions for expenses are to be made from effective capital value since we are not concerned with net annual value. Be that as it may, it certainly cannot be taken to mean that they should be added on. To do so would be to obtain an amount in excess of gross value as has been done in this case.
>
> Our conclusion is borne out if we consider the second limb of the primary definition, when the annual value of 'a wharf, pier, jetty or landing stage' is sought to be determined. Since 'expenses of repair, insurance, maintenance or upkeep,' are assumed to be payable by the tenant must they be deducted from 'the gross amount' at which the premises can reasonably be let from year to year? This surely is not the Chief Assessor's contention, and is certainly not borne out by the phraseology of that limb. As a matter of fact, the Chief Assessor in the present case has made no distinction, and rightly so, when considering the effective capital value of the land and buildings on the one hand, and the wharf and jetty on the other.'

The Board concludes:

> "We are of the opinion that 'topping-up' on effective capital value as has been done by the respondent, would not only be contrary to the literal meaning of the primary definition, but would also constitute a radical departure from the fundamental concept of the contractor's method, which in essence is the process of applying an interest charge on actual or estimated cost in order to ascertain the gross annual value of a hypothetical tenancy."

It is submitted that the Board has mistakenly come to the conclusion that the application of the interest rate to the effective capital value at stage four, as computed by the Chief Assessor, gives a gross amount.

The Board had accepted the evidence of the Chief Assessor's valuer that the interest rate of 6% applied by him as a net rate was a reasonable figure "being well below commercial borrowing rates." I see no reason to interfere with the Board's decision that 6% is the proper rate to be applied. If at the fourth stage a net market or commercial rate of interest is applied to the effective capital value the result is clearly a net amount. This being so and to comply with the fifth stage so that the result of the fourth stage really represents what the hypothetical tenant would pay for an annual tenancy on the statutory terms there must then be added the amount for repairs, insurance, maintenance and property tax for these items are within the statutory terms under the primary definition and which the landlord must pay and which he would then include in his rent under a reasonable letting.

Since the Board was satisfied that the 6% applied by the Chief Assessor was a figure "well below commercial borrowing rates", and since the Board did not reject the evidence of the Chief Assessor's valuer

but rather agreed with and accepted what he had said, the Board should, to be consistent, also conclude that the result of applying the 6% net market or commercial rate to the effective capital value would give a net value. It is illogical to say that the result is a gross value. The application of a net rate to a capital sum cannot give a gross amount. The Board has, therefore, erred by so concluding and has therefore erred in ordering that the expenses of repairs, insurance, maintenance and property tax should not be added at all.

The question as to whether to add 18% or 36% of the annual value for property tax was one of the issues before the Board. The Board, however, did not answer the question because it decided that nothing at all, including property tax, should be added to arrive at the annual value.

This point was raised by the appellant before this court but the respondents have not answered. Before the Board the respondents had claimed that it should be only 18% because that is the rate they had in fact been paying as the property was owner-occupied. The Chief Assessor says, it should be 36%.

After considering the arguments advanced on behalf of the appellant I have come to the view that the proper rate to apply is 36%.

In the result this appeal is allowed with costs.

Appeal allowed.

Solicitors: *Rodyk & Davidson.*

TATLIEN HARDWARE PTE. LTD. v. TAN & LIE & ANOR.

[O.C.J. (Wee Chong Jin C.J.) December 16, 1980]
[Singapore — Originating Summons No. 328 of 1980]

Contract — Sale of land — Requisition answer referring to road widening if lot comes for redevelopment — Whether implied term that contract conditional upon property being capable of redevelopment or if redeveloped, there would be no scheme affecting its redevelopment.

Land Law — Sale of land — Requisition answer — Road widening if lot comes for redevelopment — Whether this amounted to unsatisfactory answer.

The second defendants by an undated option expiring on June 30, 1980 offered to sell Nos. 2/2A and 6/6A Moonstone Lane for $620,000. The plaintiffs exercised the option. Clause 5 of the option provided for the annulment of the sale "in the event of any of the answers to such requisitions being unsatisfactory".

On May 6, 1980, a reply was received from the authorities in answer to a requisition of the land concerned. The answer stated that "the road widening line is inserted by the Roads Branch in accordance with the current standard and will be applicable if and when the lot comes for redevelopment."

The sole question before the court was whether the contents of the said letter amounted to an "unsatisfactory answer" to a requisition within the meaning of clause 5 of the option.

Held, dismissing the plaintiffs' application: (1) there can be no implied term that the contract was conditional upon the property being capable of redevelopment or that, if it could be redeveloped, there would be no scheme affecting its redevelopment;

(2) the fact that if and when the property is subsequently redeveloped some portion of it would be compulsorily acquired for road widening purpose thus diminishing the value of the property is immaterial.

ORIGINATING SUMMONS.

Wee Chow Sing for the plaintiffs.

Sant Singh for the defendants.

Wee Chong Jin C.J: The second defendants, Yew Lee Chiong Metal Containers Pte. Ltd., by an undated option expiring on June 30, 1980 offered to sell Nos. 2/2A and 6/6A Moonstone Lane, Singapore for $620,000. The plaintiffs, Tatlien Hardware Pte. Ltd. exercised the option. Clause 5 of the Option provided as follows: —

"5. The sale will be subject to the Purchaser receiving satisfactory answers to all requisitions (whether on title or to the City Authorities) and in the event of any of the answers to such requisitions being unsatisfactory, the Purchaser may annul the sale in which event the deposit shall be refunded to the Purchaser."

In answer to a requisition the "City Authorities" reply dated May 6, 1980 was as follows: —

"I refer to your letter dated April 18, 1980 on the above and am to inform you of the following:—

(i) According to the Master Plan reading the site is not affected by a road widening line. However, it is affected by a rear service road as the properties abut this rear service road.

(ii) The portion marked green on your Interpretation Plan is the existing back lane which is the Master Plan's intention to convert it into a rear service road.

(iii) Your copy of Interpretation Plan showing the road widening line is inserted by the Roads Branch in accordance with the current standard and will be applicable if and when the lot comes for redevelopment.

(iv) However, under this Plan the site is not affected by the said rear service road."

It was agreed that the sole question before me was whether the contents of that letter amounted to an unsatisfactory answer to a requisition within the meaning of Clause 5 of the Option. I decided it was not, and now give my reasons.

It was submitted on behalf of the plaintiffs that the property in question is affected by a "road widening line" which would be applied if and when the property is subsequently redeveloped and that meant that when the plaintiffs redevelop the property the portion covered by the road widening line would be compulsorily acquired thus diminishing the value of the property. In those circumstances it is submitted that the letter from the "City Authorities" constituted an unsatisfactory answer within the meaning of Clause 5 of the Option. I rejected that submission. This is the case of a contract for the sale of land. The contract contained no express provision or condition that it was being purchased for redevelopment. There can be no inference that the intending purchaser was purchasing the property for redevelopment. There can be no implied term that the contract was conditional upon the property being capable of redevelopment or that, if it could be redeveloped, there would be no scheme affecting its redevelopment. The fact that if and when the property is subsequently redeveloped some portion of it would be compulsorily acquired for road widening purposes thus diminishing the value of the property is immaterial.

For these reasons I found in favour of the second defendants and I dismissed the plaintiffs' application.

Application dismissed.

Solicitors: *Chua, Hay & Wee: Ang, Ng & Lee.*